

IRRC Report to CalPERS, December 2005
Publicly Traded Companies that Benefited from Forced or Slave Labor, 1929-1945

Executive Summary

CalPERS's investment in companies that facing lawsuits over their use of forced or slave labor during World War II is extremely small. It is highly unlikely that any company in CalPERS portfolio could be successfully sued in U.S. courts. Eight companies in CalPERS's portfolio are defendants in lawsuits filed in Japan (including suits currently in the appeals process), and an additional 22 companies could be vulnerable to such suits. Awards in similar suits have been extremely small, however, with the largest being under \$200,000.

CalPERS also has holdings in 42 other companies that used forced or slave labor but that face little or no legal liability for their actions. Thirty-five of these companies have made voluntary reparation payments.

Introduction

I. Description of this Report

This report was prepared in order to fulfill a contract with the California Public Employees' Retirement System (CalPERS), undertaken in response to state legislative mandate Calif. Stats. 1999, Ch. 216, a statute requiring CalPERS "to monitor investments in businesses that owe compensation to victims of slave labor." This report lists companies that have been identified as having employed forced or slave labor in Nazi-controlled or allied territories from 1929 to 1945. It is an updated version of a report first submitted in September 2001.

II. Historical Background

Particularly near the end of World War II, a large portion of the able-bodied male workers in Germany and Japan were serving in the armed forces, and the German and Japanese governments offered private corporations the opportunity to use as laborers foreign nationals, prisoners of war or concentration camp inmates. In addition, Japanese corporations established outposts in countries occupied by Japan. In some cases Japanese corporations paid these laborers a small salary (frequently in company scrip); in Germany the government often received payment for each laborer a given company used. Companies provided laborers with food and shelter, which was frequently inadequate.

Many historians make a distinction between slave labor, usually performed by POWs or concentration camp victims and including severe abuse, and forced labor, frequently performed by foreign civilians working against their will, but under somewhat more humane conditions. (The characterization of forced labor as more humane than slave labor is a relative one: for example, while female forced laborers at Volkswagen were treated better than concentration camp inmates, forced laborers' infants were taken from them and kept in an unheated, bug-infested nursery, where nearly all of them died from neglect.) Because Calif. Stats. 1999, Ch. 216, covers companies using both slave and forced labor, IRRC uses the term "forced labor" as an inclusive term, describing labor that may have been forced or slave. The term "slave labor" appears in this report only in cases where companies described their laborers as "slave laborers" to IRRC; however, in some cases this may be the result of the language barrier rather than an indication that slave, as opposed to forced, labor was used.

III. Methodology

IRRC's main sources of information for the names of companies involved in forced or slave labor were the International Tracing Service's *Catalogue of Camps and Prisons in Germany and German-Occupied Territories, Sept. 1, 1939-May 8, 1945*, compiled in 1949; the English-language (and in some cases, German-language) press, accessed through the NEXIS press archive, nongovernmental organizations, and documents from the offices of the Supreme Commander of the Allied Powers in Japan, now housed in the

U.S. National Archives. We are also grateful for the help of historian Linda Goetz Holmes, an expert on U.S. POWs in Japan and author of the book *Unjust Enrichment*, who kindly shared with us historical documents from her own collections. In some cases IRRC encountered English- and Korean-language non-corporate and non-governmental websites providing information on companies' involvement in forced or slave labor; we used such information as a jumping-off point for further research and have not included any company based solely on information from an independent website. IRRC used a variety of sources to find corporate addresses and investing information.

IRRC surveyed each company on this list, describing the project and including all of the information that we had been able to gather concerning the company's involvement in forced or slave labor and any payments the company may have made to charitable organizations assisting former victims of forced or slave labor. Companies were given an opportunity to comment on the descriptions of their involvement. Several companies made the case to IRRC that they should not be included in this list; in nearly all cases we have left them in the list but have added their comments.

IRRC also reviewed the list of companies that have contributed to the German Economy Foundation Initiative's "Remembrance, Responsibility and the Future" fund, founded by German corporations with the support of the German government to provide compensation to former forced laborers and other victims of the Nazi regime. Companies on this list that are also contributors to the fund are identified in the report.

IV. Legal Status of Companies on this List

In October 2003, the U.S. Supreme Court upheld an earlier Ninth Circuit Court of Appeals decision that found California Code of Civil Procedure 354.6—which extended the statute of limitations for former forced laborers to sue companies that profited from their labor—to be unconstitutional. The Ninth Circuit Court of Appeals based its decision on the Constitution's granting of foreign affairs power to the federal government, rather than states. Extending the statute of limitations on forced labor claims is not merely a procedural matter, the court found, but amounted to interference by California in the foreign policy of the United States. Most of the companies on this list, therefore, face significantly diminished liability from their use of forced laborers. Companies are therefore classified according to the type of forced labor they used and any settlement agreements or court decisions that lessen corporate responsibility for this type of forced labor.

Legal status of claims by various victim groups:

Chinese and Korean civilians: It is extremely unlikely that any lawsuits by these groups will be successful in U.S. courts. Companies that used non-U.S. forced laborers may still be open to legal liability in Japan, however. Out of at least a dozen decisions in lawsuits against companies that used forced or slave labor, until 2004 only one—a suit against Mitsui Mining—had been found in favor of the plaintiffs. (Four other suits ended when the companies accused of using forced labor agreed to make payments to the plaintiffs; however, the payments were characterized as voluntary.) In 2004, however, two more decisions were made in favor of plaintiffs (out of a total of five forced labor decisions); one of these was made by an appeals court that turned down an earlier rejection of former forced laborers' claims. Among the suits rejecting the plaintiffs' pleas, however, was an overturning of the decision against Mitsui Mining. Decisions against former forced laborers usually cited the expiration of statutes of limitations or treaties between Japan and its former enemies. In 2005, a Japanese court dismissed a suit against a company that had been accused of using Chinese civilians as forced laborers. The few judgments against companies have resulted in extremely small damage payments; the largest such court-ordered payment was \$190,000.

The following companies in CalPERS's portfolio are currently facing lawsuits (including lawsuits under appeal) in Japan over their use of Chinese or Korean civilians as forced laborers:

Dowa Mining Co., Ltd.
Furukawa Co.
Kajima Corporation
Mitsubishi Materials Corp.
Mitsui Mining and Smelting
Nippon Steel Corp.

Nishimatsu Construction Co.
Taisei Corp.

In addition, the following companies in CalPERS's portfolio are not currently involved in such lawsuits, but have been accused of using Chinese or Korean civilians as forced laborers and may be vulnerable to future suits:

Daido Steel Co. Ltd.
Ishihara Sangyo Kaisha Ltd.
Ishikawajima-Harima Heavy Industries
JFE Holdings
Kawasaki Heavy Industries
Mitsubishi Corp.
Mitsubishi Heavy Industries
Mitsui & Co.
Mitsui Engineering and Shipbuilding Co.
Mitsui OSK Lines Ltd.
Nippon Express
Nippon Mining Holdings
Nissan Motor Co. Ltd.
Shin-Etsu Chemical Co. Ltd.
Showa Denko KK
Sumitomo Chemical Co. Ltd.
Sumitomo Corp.
Sumitomo Heavy Industries
Sumitomo Metal Industries Ltd.
Taiheiyo Cement Corp.
Teijin
Toshiba
UBE Industries Ltd.

U.S. POWs: CalPERS's portfolio includes 23 companies that used U.S. POWs as forced laborers. The Ninth Circuit decision regarding California's forced labor law and the subsequent Supreme Court upholding of that law significantly reduce the risk that companies that profited from the labor of former prisoners of war would be liable in U.S. courts. U.S. Rep. Dana Rohrabacher (R-Calif.) has made various attempts to change federal law in order to allow them to sue companies that profited from their labor, introducing legislation in 2002 and 2003 that would allow former POWs to sue companies that profited from their labor. Both bills died in committee, however, and he did not introduce any such bills in 2004 or 2005. Even if passed, the bills would probably have been found unconstitutional. Past federal courts have determined that in the treaty ending the war with Japan the United States forfeited the right of its citizens to receive reparations from any Japanese entity.

In a September 2000 case, U.S. District Judge Vaughn R. Walker of the Northern District of California dismissed a case brought by former U.S. POWs who had been forced to labor at various Japanese companies. Walker ruled that the 1951 Treaty of San Francisco, which established peace between Japan and the Allied nations (including the United States, Australia, Great Britain, Holland, the Philippines and others), precluded members of the armed forces of Allied nations from suing as a result of their wartime experiences. Article 14 of the treaty reads, in part:

Except as otherwise provided in the present Treaty, the Allied Powers waive all reparations claims of the Allied Powers, other claims of the Allied Powers and their nationals arising out of any actions taken by Japan and its nationals in the course of the prosecution of the war, and claims of the Allied Powers for direct military costs of occupation.

While the language of the treaty appears clear, a number of legal scholars disagree with Walker's finding, and former POWs have called for a reversal of his ruling or new legislation that would permit claims against Japanese companies.

Australian, British and other Allied POWs: CalPERS's portfolio includes five companies that used other Allied POWs as forced laborers. (Four of these companies also used U.S. POWs as forced laborers.) The Treaty of San Francisco, as interpreted by the Northern District of California, precludes claims by all Allied Powers POWs, and the Justice for United States Prisoners of War Act does not include non-U.S. Allied Powers POWs among groups that it would allow to sue in U.S. courts. IRRRC is unaware of any successful suits by Allied Powers POWs in non-U.S. courts.

Filipino civilians and POWs: There are eight companies in CalPERS's portfolio that used Filipino civilians and POWs as forced laborers. Filipino civilians and POWs are no longer able to sue in the United States, and IRRRC is unaware of any Japanese court cases in which Filipino former forced laborers received compensation from companies that benefited from their labor. The risk of lawsuits against companies that benefited from the labor of Filipinos is therefore extremely low.

Indonesian civilians: There are two companies in CalPERS's portfolio that used Indonesian civilians as forced laborers. Indonesian civilians were forced to labor in their own country while it was occupied by Japan. They were used both as agricultural laborers and laborers in factories owned by Japanese corporations. IRRRC has identified several companies that used Indonesian civilians as forced laborers; however, IRRRC is unaware of any lawsuits filed against these or other corporations in the U.S., Japan or elsewhere, and believes that the risk of lawsuits against such companies is extremely small.

Groups persecuted by the Nazi regime: There are 42 companies in CalPERS's portfolio that used Nazi victims as forced or slave laborers. At least 21 of these companies have made some sort of voluntary reparations to former forced laborers. "Nazi victims" includes conquered peoples (most notably Eastern Europeans, but also French nationals and some Allied POWs) brought to Germany or its occupied territories as laborers and those incarcerated in concentration camps, including Jews, members of the Roma and Sinti tribes ("Gypsies"), Jehovah's witnesses and others.

Germany, Austria and Switzerland have each reached settlement agreements with representatives of these former forced and slave laborers, absolving German, Austrian and Swiss companies—as well as parent companies with wartime German, Austrian and Swiss subsidiaries—of legal responsibility. A summary of each agreement appears below.

German settlement: In August 2000, the German government passed the German Foundation Act, setting up a foundation funded jointly by the government and private businesses to provide payments to former forced laborers and other victims of the Nazi regime. Nongovernmental organizations are now in the final stages of administering direct payments from the Foundation's "Remembrance, Responsibility and the Future" fund to Nazi victims. Other payments are also being made to organizations fighting xenophobia. The German and U.S. governments assured German businesses that the compensation program would provide companies operating in Germany during the Nazi era (and foreign companies with subsidiaries operating in Germany during the Nazi era) with immunity from all lawsuits related to Holocaust-era claims, including claims from former forced laborers.

While the German Foundation Act is often referred to as a "settlement," it is technically only an agreement between the U.S. and German governments and German businesses. A legal settlement is reached under the guidance of a court and precludes any future lawsuits regarding the same matter. The German Foundation Act provides no such protection. Lawsuits can still be filed in the United States against German companies that benefited from forced labor; however, when such suits are filed, the United States files a Statement of Interest recommending that the case be dismissed. The reparations agreement between the U.S. and German governments and the 2003 Supreme Court decision against California Code of Civil Procedure 354.6 together make it highly unlikely that any German companies can successfully be sued for their use of forced labor. A recent court case in New Jersey illustrates this point: in a lawsuit against Schering and Bayer, Judge William G. Bassler found that "The history of foreign policy

commitments devoted to the resolution of Holocaust-era claims, coupled with the relatively recent creation of the Foundation, renders such claims nonjusticiable.”

In addition to the possibility of cases against German companies being dismissed on their merits, the administrators of the “Remembrance, Responsibility and the Future” fund for former forced laborers and other Nazi victims have influenced U.S. plaintiffs not to file such suits in the past. A lawsuit filed against IBM in February 2001 for the role of its German subsidiary, Dehomag, in helping the Nazi government analyze census data to facilitate the arrest of Jews and other targets of persecution, was withdrawn a few weeks after filing. The German government feared that the lawsuit threatened the “legal peace” that had been promised to corporations, and announced that plans for payment to Nazi victims would not go forward as long as the suit was pending.

Swiss settlement: As part of a settlement agreement with Swiss banks accused of appropriating the assets of depositors who died in the Holocaust, Judge Edward Korman of the Eastern District of New York issued a call for information from Swiss firms whose subsidiaries in Nazi-occupied countries had benefited from forced labor. Korman promised immunity from forced labor litigation to companies that identified themselves to a court-appointed Special Master and provided lists of forced laborers “or ... represented that such names are unavailable despite diligent investigation.” Of the companies that came forward with information, the majority were not granted immunity because their subsidiaries that used forced labor were not Swiss-owned during the Second World War. In an April 4, 2001, decision, Korman lists 27 companies that were granted immunity. (Ten of these are in CalPERS’s portfolio.) As with the settlement with German companies, these Swiss companies could theoretically be sued by former forced laborers, but it is highly unlikely that they will be.

Austrian settlement: An agreement similar to the German and Swiss agreements was reached with Austrian companies in 2001, leaving the likelihood of lawsuits against Austrian companies small. There are no Austrian companies in CalPERS’s portfolio that have been accused of using forced labor.

Summary of legal issues: While there exist scenarios under which the companies on this list could be sued in U.S. courts by former laborers, such scenarios are highly unlikely. Still, IIRC recommends that CalPERS continue to monitor new legal developments. Japanese companies on this list are at risk of lawsuits filed in Japanese courts, although any awards resulting from those cases are likely to be small.

V. Identification of Successor Companies

The majority of the German companies that used forced or slave labor no longer exist as publicly held companies under the same name they used during World War II. In identifying German successor companies, IIRC relied in part on research conducted by the American Jewish Committee, which we confirmed by checking addresses and by reviewing corporate histories on company websites, and in correspondence with the present-day companies themselves.

Japanese companies posed a different problem: While many retain the names of World War II-era companies, several of those companies were dissolved at the end of the war and later reorganized, and the present-day companies have told IIRC that they are not liable for predecessor companies’ actions. Despite corporate reorganizations, however, Japanese courts have found reorganized companies to be responsible for the actions of their predecessors. In cases where companies disputed their identification with prewar precursor companies, IIRC consulted the *International Directory of Company Histories* to confirm its identifications, but has noted cases in which companies claim not to be legal successors.

VI. Identifiers and Abbreviations

For each company, IIRC has included its name and address, as well as ticker and exchange information and the following identifying numbers:

CUSIP: Committee on Uniform Securities Identification Procedures, which supplies a unique 9-digit number for all securities traded in the United States

SEDOL: Stock Exchange Daily Official List, a 7-digit number assigned to the majority of publicly traded stocks throughout the world

ISIN: International Securities Identification Number, a 10-digit identification number

WKN: Wertpapier-Kenn-Nummer, identifying companies traded in Germany

Companies traded on more than one exchange have separate SEDOLs and ISINs for each listing. IRRC has included information on up to three exchanges where companies are traded; however, most companies on the list are traded on only one exchange.

Selected Bibliography

Note: Part I includes references to some of these documents; abbreviations used in references appear in italics

Archival resources:

Supreme Commander of the Allied Powers, Manila Branch—Miscellaneous Files (1945-1949).
abbreviated in Part I as "Allied Powers Records"

Supreme Commander of the Allied Powers, Legal Section, Administrative Division—Miscellaneous Files (1945-1950).
abbreviated in Part I as "Allied Powers Records"

Articles:

Michael J. Bazler, *Nuremberg in America: Litigating the Holocaust in United States Courts*, 34 University of Richmond Law Review 1 (March 2000).

David D. Caron and Adam Schneider, *U.S. Litigation Concerning Japanese Forced Labor in World War II*, American Society of International Law, October 2000, accessed at www.asil.org/insights/insigh57.htm.

Steven C. Clemons, *Recovering Japan's Wartime Past—and Ours*, The New York Times, Sept. 4, 2001, at A23.

Corporate Watch, *Appeal to the International Labour Organization Regarding Violation of Convention No. 29 by Japan During Wartime*, December 8, 1997, accessed at www.corpwatch.org/trac/japan/domestic/humanrts/ilo1.html.

Madeline Doms, *Compensation for Survivors of Slave and Forced Labor: The Swiss Bank Settlement and the German Foundation Provide Options for Recovery for Holocaust Survivors*, 14 Transnational Lawyer 171 (Spring 2001).

Barry A. Fisher, *Japan's Postwar Compensation Litigation*, 22 Whittier Law Review 35 (Fall 2000).

Sean D. Murphy, *Contemporary Practice of the United States Relating to International Law*, 95 American Journal of International Law 132 (January 2001).

Anita Ramasastry, *Corporate Complicity: From Nuremberg to Rangoon -- An Examination of Forced Labor Cases and Their Impact on the Liability of Multinational Corporations*, 20 Berkeley J. Int'l L. 91 (2002).

Abbreviated in Part I as "20 Berkeley J. Int'l L. 91"

Kara C. Ryf, *Burger-Fischer v. Degussa AG: U.S. Courts Allow Siemens and Degussa to Profit from Holocaust Slave Labor*, 33 Case Western Reserve Journal of International Law 155 (Winter 2001).

Shigeru Sato, *Labour Relations in Japanese Occupied Indonesia* (Changing Labour Relations in Asia International Research Programme), www.iisg.nl/~clara/publicat/clara8.doc.

Anthony J. Sebok, *Un-Settling the Holocaust*, parts I and II (Aug. 28 and Aug. 29, 2000) writ.news.findlaw.com/sebok/20000828.html and writ.news.findlaw.com/sebok/20000829.html.

Books:

John Authers, Richard Wolffe, *The Victim's Fortune: Inside the Epic Battle Over the Debts of the Holocaust* (New York: Harper Collins, 2002)

Reinhold Billstein, Karola Fings, Anita Kugler, Nicholas Levis, *Working for the Enemy: Ford, General Motors, and Forced Labor in Germany during the Second World War* (New York: Berghahn Books, 2000).

abbreviated in Part I as "Working for the Enemy"

Christopher R. Browning, *The Origins of the Final Solution: The Evolution of Nazi Jewish Policy, September 1939-March 1942* (Lincoln: University of Nebraska Press, 2004).

Thomas Derdak, editor, *International Directory of Company Histories* (Chicago: St. James Press, 1988, 2000).

Benjamin B. Ferencz, *Less Than Slaves: Jewish Forced Labor and the Quest for Compensation*

Hisakazu Fujita, Isami Suzuki, Kantaro Nagano, *War and the Rights of Individuals: Renaissance of Individual Compensation* (Tokyo: Nippon Hyoron-sha Co. Ltd., 1999).

Abbreviated in Part I as "War and the Rights of Individuals"

Martin Gilbert, *Atlas of the Holocaust* (New York: William Morrow and Company, 1993).

Linda Goetz Holmes, *Unjust Enrichment: How Japan's Companies Built Postwar Fortunes Using American POWs* (Mechanicsburg: Stackpole Books, 2001).

Abbreviated in Part I as "Unjust Enrichment"

Felicja Karay (translated from the Hebrew by Sara Kitai), *Death Comes in Yellow : Skarzysko-Kamienna Slave Labor Camp* (Amsterdam : Harwood Academic, 1996).

abbreviated in Part I as "Death Comes in Yellow"

Martin Weinmann, *Das nationalsozialistische Lagersystem* (Frankfurt: Zweitausendeins, 1999). Index available at www.zweitausendeins.de/pdf/ZA.pdf. Incorporates International Tracking Service, *Catalogue of Camps and Prisons in Germany and German-Occupied Territories, Sept. 1, 1939-May 8, 1945* (Arolsen: 1949, 1950, 1951).

abbreviated in Part I as "Catalogue of Camps"

Legal documents:

Multilateral Treaty of Peace with Japan, April 8, 1951, 3 U.S.T. 3169.

Iwanowa v. Ford Motor Company and Ford-Werke, 67 F. Supp. 2d 424 (D. N.J., Sept. 13, 1999)

In Re: Nazi Era Cases Against German Defendants Litigation, 198 F.R.D. 429 (D.N.J. Dec. 5, 2000).

Jeong v. Onoda Cement Co., Ltd., 2000 U.S. Dist. LEXIS 7985 (C.D. Calif., May 17, 2000).

In Re: World War II Era Japanese Forced Labor Litigation, 114 F.Supp. 2d 939 (N.D. Calif. Sept. 21, 2000); 164 F. Supp. 2d 1153 (N.D. Calif. Sept. 17, 2001).

In Re: Holocaust Victim Assets Litigation, No. CV 96-4849 (E.D.N.Y., April 4, 2001) (order regarding Swiss-owned or -affiliated companies granted releases); Special Master's Proposal documents, available at www.nyed.uscourts.gov/pub/rulings/cv/1996/697505.pdf, www.nyed.uscourts.gov/pub/rulings/cv/1996/6672021.pdf and www.swissbankclaims.com/PDFs_Eng/697501.pdf

abbreviated in Part I as "Korman correspondence" and "Special Master's report"

In Re: World War II Era Japanese Forced Labor Litigation, 164 F. Supp 2d 1160 (N.D. Calif. Sept. 17, 2001)

Deutsch v. Turner Corp., 317 F.3d 1005 (9th Cir., Jan. 21, 2003)

In Re: Nazi Era Cases Against German Defendants Litigation, 334 F. Supp. 2d 690 (D. N.J., Sept. 10, 2004).

Online resources:

American Jewish Committee, *German Firms that Used Slave or Forced Labor During the Nazi Era* (last modified Jan. 27, 2000) www.usisrael.org/jsource/Holocaust/germancos.html.

German Economy Foundation Initiative Steering Group, *Members* (accessed Dec. 14, 2005) www.stiftungsinitiative.de/eindex.html.

International Organization for Migration, *German Forced Labour Compensation Programme* (accessed Dec. 14, 2005) www.compensation-for-forced-labour.org.

Peacenet, *Facts About Conscription of the Korean and Chinese People as Forced Labour* (accessed Dec. 16, 2002) victim.peacenet.or.kr/ilo/eilo-2.htm.